THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.2002 of 1999

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Dated:21.02.2006

Between:

Sultan Lateef Shamshuddin Ahmed, S/o.M.A.Wahab,
R/o.Asif Avenue Rajbhavan Road Somajiguda,
Hyderabad.

..... PETITIONER

AND

Guntur Municipal Corporation, Rep.by its Commissioner,
Guntur.

.....RESPONDENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.2002 of 1999

ORDER:

The petitioner is the owner of two commercial complexes in Guntur. Those are assessed to property tax bearing assessment No.30253. The respondent-Corporation issued a demand notice on 31.03.1998 calling upon the petitioner to pay the house tax for twenty years for a period from 1976-1977 to 1996-1997. Aggrieved by the same, the petitioner filed the present writ petition contending that he has been requesting the respondent-Corporation to allot separate assessment numbers, which they did not do, and therefore, the respondent cannot demand the house tax for the period from 1976 to 1995. It is also contended that the demand made by the respondent-Corporation is time barred, and therefore, without jurisdiction.

This Court while admitting the writ petition stayed the collection of the demanded tax. However, by order, dated 08.09.1999, made in W.V.M.P.No.2349 of 1999, the orders were modified staying the collection of the demanded tax on condition of the petitioner paying a sum of Rs.25,000/- to the respondent.

In the counter affidavit filed by the respondent-Corporation it is stated that the Municipality served notices demanding property tax every half yearly since 1976, but the petitioner willfully avoided payment of taxes, as a result of which, the arrears have mounted up to Rs.95,476/-. The allegation that the demand is time barred is denied.

Learned Counsel for the petitioner, T.Srinivas Reddy, has placed strong reliance on three Division Bench judgments of this Court in **The Municipal Corporation of Hyderabad v. Champalal, C.E.Cooper v. Municipal Commissioner of Hyderabad** and **V.K.Roy v. Commissioner, Municipal Corporation of Hyderabad.** He submits that the petitioner is willing to pay the property tax from the year 1995, but the respondent-Corporation cannot collect the property tax arrears, which accrued prior to 1995 as they are barred by limitation.

In **Champalal**'s case (supra) the Division Bench of this Court considered the question as to whether the Municipal Corporation is entitled to recover the arrears of tax by way of distress warrant only for a period of three years prior to the date of demand by virtue of Article 113 of the Limitation Act, 1963. Answering the question in the negative, the Division Bench held as under.

> The several provisions of the Act refer to by us above must be read together and consistent with the scheme of the Act. Sections 269 and 270 cannot be read in isolation and given a meaning far beyond the contemplation of the law makers. We are not unconscious of the fact that where the language of an enactment is clear, it must be given its due meaning; but, it must be noted that there are no words in any of the provisions in the Municipal Corporation Act which say, expressly or by necessary implication, that taxes can be recovered under Sections 269 and 270 without any regard for limitation. We are, therefore, of the opinion that the summary remedies available to the Corporation, under Sections 269 and 270 of the Act should be read consistent with the substantive remedy provided by Section 278 of the Act, and so read, it becomes clear that the said summary remedies are available only for recovery of taxes for three years from the date when the tax becomes due.

In the other two Division Bench judgments a similar view was reiterated, though both the Benches held that subject to limitation, it is permissible for the Corporation to recover the property tax under the Andhra Pradesh Revenue Recovery Act, 1864. The legal position is not denied nor the Counsel for the Corporation has brought to the notice of this Court any other decisions, which took a contra view.

In view of the binding precedents, this Writ Petition must succeed, and is accordingly allowed, and there shall be no order as to costs.

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(V.V.S.RAO, J)

21.02.2006

vs